

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

Bradley Caddell, §  
§  
Plaintiff, §  
§  
v. § Case No. 3:14-cv-02249  
§  
Brad Livingston, et al. §  
Defendants. §

**DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO EXHAUST  
ADMINISTRATIVE REMEDIES**

**Exhibit A:**

TDCJ Grievance Records for Bradley Caddell, TDCJ #1697940  
with supporting Business Records Affidavit (Bates Stamped Ex. A 1-5)

**BUSINESS RECORDS AFFIDAVIT**

**STATE OF TEXAS**

§

**COUNTY OF WALKER**

§

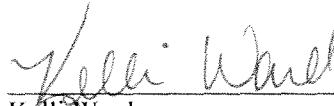
§

BEFORE ME, the undersigned authority, personally appeared, Kelli Ward, who, being duly sworn by me, deposed as follows:

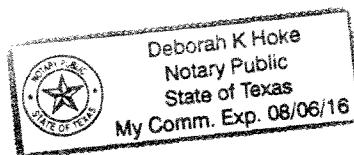
"My name is Kelli Ward. I am over 18 years of age, of sound mind, capable of making this affidavit, and have personal knowledge of the facts herein stated:

I am employed as the Manager of Offender Grievance for the Texas Department of Criminal Justice (TDCJ). I am the custodian of the Offender Grievance Records for the TDCJ, and these records were kept in the regular course of business, and it is the regular course of business for an employee or representative of the TDCJ, with knowledge of the act, event, condition, or opinion, recorded to make the record or to transmit information thereof to be included in such record. The record was made at or near the time or reasonably soon thereafter. I have reviewed the grievance records for Offender **Caddell, Bradley** TDCJ #1697940, Cause Number 3:14CV2249, for the time period of June 2012 to the present."

"The records attached hereto are the original or exact duplicates of the originals."

  
\_\_\_\_\_  
Kelli Ward  
Manager, Offender Grievance  
Texas Department of Criminal Justice

SWORN TO AND SUBSCRIBED before me on this the 1<sup>st</sup> day of July, 2014.



  
\_\_\_\_\_  
NOTARY PUBLIC in and for  
The State of Texas



## Texas Department of Criminal Justice

STEP 2 OFFENDER  
GRIEVANCE FORM

Offender Name: Bradley Coddell TDCJ # 169794D  
 Unit: Hatchins Housing Assignment: A4-37  
 Unit where incident occurred: Hatchins

OFFICE USE ONLY	
Grievance #:	<u>2012153637</u>
UGI Recd Date:	<u>JUN 25 2012</u>
HQ Recd Date:	<u>JUL 02 2012</u>
Date Due:	<u>8-9-12</u>
Grievance Code:	<u>608, 616</u>
Investigator ID #:	<u>367</u>
Extension Date:	

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be specific). I am dissatisfied with the response at Step 1 because...

- #1 On March 8<sup>th</sup> they didn't want to hear about my Kerlin which I did complain.
- #2 On April 24<sup>th</sup> was not the first SCR. I was or been complaining for over a year. I even wrote a Step 1 Grievance to remove from a Top to bottom bunk. When I did complain to one of the many P.A.s that's been on this Unit over the last year and half they told me they logged it in the computer. But ~~and~~ <sup>now</sup> to my knowledge they didn't want to give me anything for the pain. That it would hurt no more than it would help me. So for a long time I just let it go thinking I would take care of it since I got out. But after Parole took my short-wave and looking on doing the rest of my time I really need something done about the pain and the size of it.
- #3 Upon the Physician his or her professional decision review. Which it failed under failure to treat a prisoner condition could result in further significant injury or the unnecessary and wanton infliction of pain? Deliberate Indifference.
- #4 Yes it does affect my daily activities.  
 I have all of my I-60's and log-ins.  
 One of the P.A.s on the Unit told me that because of my Age, Release date and Chronic Condition

They were not responsible for my treatment.

If I have to wait until I'm released to have this medical condition fixed. It will take me another 90 to 120 days before I can get back to 100% work condition.

Thank you.

They have even charged me \$100.00 Co-Pay

Offender Signature: Bradley J. Coddell

Date: 6-21-2012

**Grievance Response:**

In your Step 1 grievance, you stated that you have been denied appropriate medical treatment for your umbilical hernia.

Review of the medical record supports the response at Step 1.

Further review of the medical record indicates that you were seen by the doctor for Chronic Care Clinic on 05/02/12 with no mention of a hernia at that time. Documentation indicates that you were seen by nursing on 05/10/12 for hernia pain. The doctor was notified and ordered ibuprofen 600mg twice daily for 7 days and advised to return to clinic if symptoms persist or worsen. You were seen again by nursing on 05/19/12 for hernia pain and received an order for ibuprofen 600mg twice daily for 10 days and advised to follow up with the unit provider on 05/21/12 for further evaluation. You were seen by the provider on 05/21/12 for hernia pain. The provider noted that you were asking for a second opinion and surgical repair. The provider instructed you that your hernia did not meet the criteria for surgical repair and instructed you on the rationale for the abdominal binder that was previously issued to you. Documentation indicates that you were instructed on the sign and symptoms of strangulation or perforation of the hernia and to return to clinic if this occurs. The medical record indicates that a Chart review was done by the doctor on 06/01/12, who noted, "umbilical hernia reducible, does not meet criteria for referral to general surgery." You were seen again by the doctor for other health issues and the hernia was noted to be "reducible" at that time.

You may submit a Sick Call Request if you feel that your condition warrants further evaluation.

Signature Authority: Myra L. Walker

Date: 8-2-2012

Returned because: \*Resubmit this form when corrections are made.

Myra L. Walker, R.N., B.S.N.  
Chief, OPS

- 1. Grievable time period has expired.
- 2. Illegible/Incomprehensible. \*
- 3. Originals not submitted. \*
- 4. Inappropriate/Excessive attachments. \*
- 5. Malicious use of vulgar, indecent, or physically threatening language. \*
- 6. Inappropriate. \*

CGO Staff Signature: \_\_\_\_\_

I-128 Back (Revised 9-1-2001)

<b>OFFICE USE ONLY</b>	
<u>Initial Submission</u>	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened	<input type="checkbox"/> Improperly Submitted
Comments: _____	
Date Returned to Offender: _____	
<u>2<sup>nd</sup> Submission</u>	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened	<input type="checkbox"/> Improperly Submitted
Comments: _____	
Date Returned to Offender: _____	
<u>3<sup>rd</sup> Submission</u>	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened	<input type="checkbox"/> Improperly Submitted
Comments: _____	
Date Returned to Offender: _____	



## Texas Department of Criminal Justice

OFFENDER  
STEP 1 GRIEVANCE FORM

Offender Name: Bradley Cockrell TDCJ # 1697940  
 Unit: Hutchins Housing Assignment: A+33 A+16  
 Unit where incident occurred: Hutchins

OFFICE USE ONLY	
Grievance #:	<u>2012153637</u>
Date Received:	<u>MAY 03 2012</u>
Date Due:	<u>06/12/2012</u>
Grievance Code:	<u>608,616</u>
Investigator ID #:	<u>J1240</u>
Extension Date:	
Date Rtrd to Offender: <u>JUN 11 2012</u>	

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)?

Medical staff on Hutchins Unit When? Porttime 4/24/12

What was their response? Stole softer medicine band, thus acknowledgment of condition

What action was taken? none

State your grievance in the space provided. Please state who, what, when, where and disciplinary case number if appropriate.

I have been diagnosed with Hepatitis C, as well as an abdominal hernia that protrudes from my abdominal area approximately five (5) inches and five (5) inches in diameter. I am in pain and because of the condition of my liver I can't make them give me any medication for pain. Have been denied parole and mandatory release so that I could have the medical treatment forthwith.

Under the Eighth Amendment I am entitled to medical care for "serious medical needs". The court describes serious medical need as being diagnosed by a physician or a lay person to recognize the necessity for doctor's attention. Hill v. Dekelb-Pogil Youth Det. Ctr. 401 F.3d 176, 187 (4th Cir. 1994). The failure to treat this condition will result in significant injury or unnecessary and wanton infliction of pain. Estelle, 429 U.S. at 104 (Jeff v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)). Under laws of state and federal ~~state~~ quick like I have "serious medical needs" and am being untreated. By their (Med. Dept.) acknowledgement with no treatment also constitutes Deliberate indifference. Estelle, 429 U.S. at 104

*Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). The prison doctor fails to respond appropriately or does not respond at all to your serious medical needs. Scott J. Amelini, 577 F.3d 642 (6th Cir. 2009); Spaulding v. Gillis, 372 F.3d 218 (3d Cir. 2004); Melby v. Bachmeier, 302 F.3d 845, 849 (8th Cir. 2002)*

Action Requested to resolve your Complaint:

*I need medical treatment, the ~~surgery~~ surgery to repair my hernia or a medical release.*

Offender Signature: *Bradley Cecello*

Date: *4-30-12*

Grievance Response:

You were given an intake physical exam on March 8, 2012. At that time you did not verbalize any complaints of your hernia. On April 24<sup>th</sup>, you submitted a SCR complaining of your hernia. This was the first SCR that was submitted regarding this medical issue. You were examined by a nurse and the unit provider on 4/25/2012. The unit provider prescribed you Fiber Laxative tablets, ordered permanent weight restrictions, given an abdominal binder to wrap around your hernia with instructions for use, and instructed on healthy diet, lifestyle and condition management. You submitted a second SCR requesting renewal for Enalapril and Hydrochlorothiazide. On the same day that you submitted the SCR, you were examined by the unit provider and those requested medications were renewed. All medical concerns that you verbalized to the nurse and unit providers were addressed and treated within the policy timeframe. Clinical decisions are not under the authority of the complaints process or the grievance mechanism. Physician extenders, by licensure and by law, have the right and responsibility to prescribe treatment based on his/her professional review.

Signature Authority: *Pam Brady*

Date: *6/8/12*

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because:  \*Resubmit this form when corrections are made..

- 1. Grievable time period has expired.
- 2. Submission in excess of 1 every 7 days. \*
- 3. Originals not submitted. \*
- 4. Inappropriate/Excessive attachments. \*
- 5. No documented attempt at informal resolution. \*
- 6. No requested relief is stated. \*
- 7. Malicious use of vulgar, indecent, or physically threatening language. \*
- 8. The issue presented is not grievable.
- 9. Redundant, Refer to grievance # \_\_\_\_\_
- 10. Illegible/Incomprehensible. \*
- 11. Inappropriate. \*

UGI Signature: \_\_\_\_\_  
I-127 Back (Revised 9-1-2007)

OFFICE USE ONLY	
Initial Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
<b>2<sup>nd</sup> Submission</b>	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
<b>3<sup>rd</sup> Submission</b>	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____

Appendix F